



Rep. Barbara Flynn Currie

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LRB099 18790 HLH 48032 a

1 AMENDMENT TO SENATE BILL 2924

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2924 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Retailers' Occupation Tax Act is amended by  
5 changing Section 6 as follows:

6 (35 ILCS 120/6) (from Ch. 120, par. 445)

7 Sec. 6. Credit memorandum or refund. If it appears, after  
8 claim therefor filed with the ~~the~~ Department, that an amount of  
9 tax or penalty or interest has been paid which was not due  
10 under this Act, whether as the result of a mistake of fact or  
11 an error of law, except as hereinafter provided, then the  
12 Department shall issue a credit memorandum or refund to the  
13 person who made the erroneous payment or, if that person died  
14 or became a person under legal disability, to his or her legal  
15 representative, as such. For purposes of this Section, the tax  
16 is deemed to be erroneously paid by a retailer when the

1 manufacturer of a motor vehicle sold by the retailer accepts  
2 the return of that automobile and refunds to the purchaser the  
3 selling price of that vehicle as provided in the New Vehicle  
4 Buyer Protection Act. When a motor vehicle is returned for a  
5 refund of the purchase price under the New Vehicle Buyer  
6 Protection Act, the Department shall issue a credit memorandum  
7 or a refund for the amount of tax paid by the retailer under  
8 this Act attributable to the initial sale of that vehicle.  
9 Claims submitted by the retailer are subject to the same  
10 restrictions and procedures provided for in this Act. If it is  
11 determined that the Department should issue a credit memorandum  
12 or refund, the Department may first apply the amount thereof  
13 against any tax or penalty or interest due or to become due  
14 under this Act or under the Use Tax Act, the Service Occupation  
15 Tax Act, the Service Use Tax Act, any local occupation or use  
16 tax administered by the Department, Section 4 of the Water  
17 Commission Act of 1985, subsections (b), (c) and (d) of Section  
18 5.01 of the Local Mass Transit District Act, or subsections  
19 (e), (f) and (g) of Section 4.03 of the Regional Transportation  
20 Authority Act, from the person who made the erroneous payment.  
21 If no tax or penalty or interest is due and no proceeding is  
22 pending to determine whether such person is indebted to the  
23 Department for tax or penalty or interest, the credit  
24 memorandum or refund shall be issued to the claimant; or (in  
25 the case of a credit memorandum) the credit memorandum may be  
26 assigned and set over by the lawful holder thereof, subject to

1 reasonable rules of the Department, to any other person who is  
2 subject to this Act, the Use Tax Act, the Service Occupation  
3 Tax Act, the Service Use Tax Act, any local occupation or use  
4 tax administered by the Department, Section 4 of the Water  
5 Commission Act of 1985, subsections (b), (c) and (d) of Section  
6 5.01 of the Local Mass Transit District Act, or subsections  
7 (e), (f) and (g) of Section 4.03 of the Regional Transportation  
8 Authority Act, and the amount thereof applied by the Department  
9 against any tax or penalty or interest due or to become due  
10 under this Act or under the Use Tax Act, the Service Occupation  
11 Tax Act, the Service Use Tax Act, any local occupation or use  
12 tax administered by the Department, Section 4 of the Water  
13 Commission Act of 1985, subsections (b), (c) and (d) of Section  
14 5.01 of the Local Mass Transit District Act, or subsections  
15 (e), (f) and (g) of Section 4.03 of the Regional Transportation  
16 Authority Act, from such assignee. However, as to any claim for  
17 credit or refund filed with the Department on and after each  
18 January 1 and July 1 no amount of tax or penalty or interest  
19 erroneously paid (either in total or partial liquidation of a  
20 tax or penalty or amount of interest under this Act) more than  
21 3 years prior to such January 1 and July 1, respectively, shall  
22 be credited or refunded, except that if both the Department and  
23 the taxpayer have agreed to an extension of time to issue a  
24 notice of tax liability as provided in Section 4 of this Act,  
25 such claim may be filed at any time prior to the expiration of  
26 the period agreed upon.

1           No claim may be allowed for any amount paid to the  
2 Department, whether paid voluntarily or involuntarily, if paid  
3 in total or partial liquidation of an assessment which had  
4 become final before the claim for credit or refund to recover  
5 the amount so paid is filed with the Department, or if paid in  
6 total or partial liquidation of a judgment or order of court.  
7 No credit may be allowed or refund made for any amount paid by  
8 or collected from any claimant unless it appears (a) that the  
9 claimant bore the burden of such amount and has not been  
10 relieved thereof nor reimbursed therefor and has not shifted  
11 such burden directly or indirectly through inclusion of such  
12 amount in the price of the tangible personal property sold by  
13 him or her or in any manner whatsoever; and that no  
14 understanding or agreement, written or oral, exists whereby he  
15 or she or his or her legal representative may be relieved of  
16 the burden of such amount, be reimbursed therefor or may shift  
17 the burden thereof; or (b) that he or she or his or her legal  
18 representative has repaid unconditionally such amount to his or  
19 her vendee (1) who bore the burden thereof and has not shifted  
20 such burden directly or indirectly, in any manner whatsoever;  
21 (2) who, if he or she has shifted such burden, has repaid  
22 unconditionally such amount to his own vendee; and (3) who is  
23 not entitled to receive any reimbursement therefor from any  
24 other source than from his or her vendor, nor to be relieved of  
25 such burden in any manner whatsoever. No credit may be allowed  
26 or refund made for any amount paid by or collected from any

1 claimant unless it appears that the claimant has  
2 unconditionally repaid, to the purchaser, any amount collected  
3 from the purchaser and retained by the claimant with respect to  
4 the same transaction under the Use Tax Act.

5 Any credit or refund that is allowed under this Section  
6 shall bear interest at the rate and in the manner specified in  
7 the Uniform Penalty and Interest Act.

8 In case the Department determines that the claimant is  
9 entitled to a refund, such refund shall be made only from such  
10 appropriation as may be available for that purpose. If it  
11 appears unlikely that the amount appropriated would permit  
12 everyone having a claim allowed during the period covered by  
13 such appropriation to elect to receive a cash refund, the  
14 Department, by rule or regulation, shall provide for the  
15 payment of refunds in hardship cases and shall define what  
16 types of cases qualify as hardship cases.

17 If a retailer who has failed to pay retailers' occupation  
18 tax on gross receipts from retail sales is required by the  
19 Department to pay such tax, such retailer, without filing any  
20 formal claim with the Department, shall be allowed to take  
21 credit against such retailers' occupation tax liability to the  
22 extent, if any, to which such retailer has paid an amount  
23 equivalent to retailers' occupation tax or has paid use tax in  
24 error to his or her vendor or vendors of the same tangible  
25 personal property which such retailer bought for resale and did  
26 not first use before selling it, and no penalty or interest

1 shall be charged to such retailer on the amount of such credit.  
2 However, when such credit is allowed to the retailer by the  
3 Department, the vendor is precluded from refunding any of that  
4 tax to the retailer and filing a claim for credit or refund  
5 with respect thereto with the Department. The provisions of  
6 this amendatory Act shall be applied retroactively, regardless  
7 of the date of the transaction.

8 (Source: P.A. 91-901, eff. 1-1-01.)".